



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGIONS 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



470242

**AUG 31 2006**

REPLY TO THE ATTENTION OF:

**By Overnight Mail**

Hon. Alex Bregen, Mayor  
Village of Fairmont City, IL  
c/o: Robert J. Sprague, Esq.  
Sprague and Urban  
26 E. Washington Street  
Belleville, Illinois 62220

Re: Old American Zinc Plant (OAZ) Superfund Site - Fairmont City, IL - Village Alleyways and Owned Property Parcels Access Issues/Remedial Investigation and Feasibility Study (RI/FS) - Response to August 23, 2006 Letter

Dear Mr. Sprague:

The United States Environmental Protection Agency (USEPA) is in receipt of your responsive letter of August 23, 2006. USEPA appreciates your client's willingness to communicate his concern regarding the potential remediation of the soil in the alleyways of Fairmont City, Illinois. As we discussed in our meeting of June 20, 2006, USEPA must evaluate information, make decisions and take actions that involve the use of federal monies under the Superfund, pursuant to (primarily) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601 to 9675, and the National Contingency Plan (NCP), 42 CFR Part 300 et al. Under these statutory and regulatory frameworks, USEPA is required to seek access at Superfund Sites, where it is determined to be necessary. Further, USEPA is required to view a conditional right of access (such as described in the proposed 'contract' from your client in your August 23, 2006 letter) as a denial of access. Please note, 40 CFR Section 300.400(d)(4)(i) reads as follows:

If consent is not granted under the authorities described in paragraph (d)(1) of this section, *or if consent is conditioned in any manner*, EPA, or the appropriate federal agency, may issue an order pursuant to section 104(e)(5) of CERCLA directing compliance with the request for access made under § 300.400(d)(1). EPA or the appropriate federal agency may ask the Attorney General to commence a civil action to compel compliance with either a request for access or an order directing compliance.

(emphasis added)

USEPA cannot accept a conditional right of access for the necessary sampling that must occur at the Fairmont City owned/controlled properties portion of the OAZ Site. Therefore, I hope that you will apprise your client of the applicable law.

Your client should also consider the offer that USEPA made at the time of our June 2006 meeting. That is, I can certainly guarantee in this writing that Fairmont City will have ample opportunity for informal and formal input and community participation in the RI/FS process (see, 40 CFR Part 300.430(c)(1)-(4)), as well as at the stage of review of the options in the Proposed Plan for remediation and determination of a final Record of Decision (ROD) (see, 40 CFR Part 300.430(f)(2)-(3)). Fairmont City may make written statements concerning its displeasure over the possibility of a remedy determination that leaves contaminated soil at the currently identified source location of the OAZ Site. These may be sent to USEPA, Superfund Division, Region 5, and will become a part of the formal Site file and will be considered during the RI/FS phase of this Superfund action. Fairmont City may also prepare to issue written statements and make public statements against any possible remedial alternative under consideration that does not dispose of the hazardous waste materials displaced during the Superfund action in a manner that is not consistent with the requirements of Fairmont City. Under the above-cited regulations, USEPA is required to consider this opinion and any alternative remedy option that Fairmont City might suggest, when developing a Proposed Plan and issuing a final ROD.

At this time, I am more than willing to discuss this matter with you. However, I am also required to inform you that USEPA has determined that the OAZ Site represents a serious and real threat to Public Health and the Environment, and that the RI/FS process cannot be delayed for too long a period of time. Therefore, I am enclosing a Superfund CERCLA Section 104(e), 42 USC 9604(e) access agreement that I hope you will counsel your client to sign (or allow you to sign on its behalf) and return to me as swiftly as may be, so that the very important work of protecting the well-being of the citizens of Fairmont City, Illinois and any other potentially affected members of the public will not be needlessly and improperly delayed.

Should your client remain unwilling to sign the access agreement, I will have to recommend to my Superfund Division program client and Regional Counsel management that USEPA go forward with its enforcement against the Village of Fairmont City by issuing an administrative order for access under CERCLA Section 104(e), 42 USC 9604(e) and, if need be, following that up with a referral to the United States Department of Justice for civil prosecution. This will add needless time and expense to all parties involved, and I hope that we can avoid such an outcome.

USEPA requires a response from your client by or before September 18, 2006. At that time, if USEPA still does not have access, I will institute next phase of the abovementioned enforcement plan.

Please feel free to contact either myself or Superfund Remedial Project Manager (RPM) Ron Murawski with any comments or questions. I can be reached at 312/886-6613. Mr. Murawski can be reached at 312/886-2940.

Sincerely,

A handwritten signature in black ink, appearing to read 'TL BT' followed by a flourish.

Tom Turner  
USEPA Staff Attorney

Enclosure

cc: R. Murawski, RPM (SR-6J)  
Superfund Div.  
J. Munoz, CIC (P-19J)  
M. Canavan, Congressional Relations Specialist (R-19J)

Doyle Wilson  
Illinois EPA  
Bureau of Land  
P.O. Box 19276  
1021 North Grand Avenue East  
Springfield, IL 62794-9276

Gary Uphoff  
Principal, Environmental Management Services Company  
5934 Nicklaus Drive  
Fort Collins, CO 80528

CONSENT FOR ACCESS TO PROPERTY  
**Old American Zinc Plant (OAZ) Superfund Site - Fairmont City, IL**

Name: **OAZ Superfund Site (Village of Fairmont City, IL)**  
Address of Property: **Village of Fairmont City, Illinois-owned and/or -controlled Alleyways and Property(ies), Fairmont City (St. Clair County) Illinois**

I consent to officers, employees, contractors, and authorized representatives (including Potentially Responsible Parties and their authorized contractors and representatives) of the United States Environmental Protection Agency (U.S. EPA), and the Illinois Environmental Protection Agency, entering and having continued access to this property for the following purposes:

- 1) Addressing hazardous materials present on the property(ies) within the Site area;
- 2) Conducting monitoring and sampling activity on the property(ies) within the Site area;
- 3) Preparing for and disposing of hazardous materials;
- 4) Performing other actions to investigate contamination on the property(ies) within the Site area that U.S. EPA may determine to be necessary; and,
- 5) Taking any response action on property(ies) within the Site area to address any release or threatened release of a hazardous substance, pollutant or contaminant which U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

I realize that these actions taken by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

This written permission is given by me voluntarily, on behalf of myself, with knowledge of my right to refuse and without threats or promises of any kind.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Village of Fairmont  
City, Illinois Official or Legal  
Representative